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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re M.V., JR., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.M.,

Defendant and Appellant.

B206035

(Los Angeles County
Super. Ct. No. CK70723)

APPEAL from an order of the Superior Court of Los Angeles County,
Anthony Trendacosta, Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

C.M., in pro. per.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County
Counsel, and Jacklyn K. Louie, for Plaintiff and Respondent.

In this dependency case (Welf. & Inst. Code, § 300 et seq.), C. M., the maternal grandmother of the minor child M. V. (Maternal Grandmother and M., respectively), appeals from a disposition order. Maternal Grandmother asserts the minor should be placed in long term foster care rather than adopted. She also contends her visits with the minor should not have to be monitored.

Maternal Grandmother's first contention is premature. There has been no decision regarding a permanent plan for M. The case is still in the reunification stage. Maternal Grandmother's second contention is without factual basis. The record does not indicate that her visits were ordered to be monitored, nor that she requested that her visits be unmonitored. Further, she herself has had a child in the dependency system (M.'s mother), because of abuse and/or neglect, and thus monitored visits between herself and M. would not be unwarranted. She also appears to be objecting to the minor being placed with his paternal aunt. However, there is no indication in the record that such a placement has been made. Therefore, because none of the issues raised by the Maternal Grandmother has merit, the order from which Maternal Grandmother has appealed will be affirmed.

BACKGROUND OF THE CASE

1. Reason for the Department Detaining M. from Mother

M. (born in October 2007), was taken into protective detention by the Los Angeles County Department of Children and Family Services (the Department) on November 9, 2007 and placed in foster care when he was 18 days old. The child's mother, B.M. (Mother), was 18 years old at that time. She is deaf and mute, and

communicates fluently in American Sign Language. She was interviewed on November 5, 2007 on an allegation of child neglect. The social worker allowed M. to remain with Mother at that time because Mother had gone to live with the minor's maternal uncle and his wife, and Mother appeared to be caring for the child properly, including taking him for a medical checkup that day.

Three days later, the maternal aunt told the social worker that Mother had left the aunt and uncle's home, with M., to go live with deaf friends who use crack and who live on the street. Mother was found living at the Union Rescue Mission with the minor. A social worker reported Mother was feeding the minor and keeping him clean and the two were bonding. However, Mother later left M. with a man and woman who use drugs and engage in domestic violence. (The man had also attacked Mother while she was holding M.) Mother left the baby with them so that she could go to a court appearance for a felony charge against her (theft at a mall). After interviewing Mother, the social worker determined that Mother would make the same bad decision again and leave the infant with that couple.

M. was taken from Mother's care and placed in a foster home. When M. was detained by the Department, Mother stated: "Kill myself right now." She was placed at County USC Hospital to secure her safety, and remained there until a day prior to the detention hearing.

2. The Detention Hearing

At the detention hearing on November 15, 2007, the court ordered infant M. detained. Mother indicated to the court that M. may have Indian heritage through his

maternal grandfather. The maternal aunt and uncle were at the hearing and the uncle indicated he had no knowledge of Indian heritage. The Department was ordered to notice the Bureau of Indian Affairs. The minor's alleged father was not at the hearing. He was serving time in Lancaster Prison for having sex with Mother while she was a minor, however he was then-currently at the California Medical Facility in Vacaville. It was not known whether he has Indian heritage. He is also deaf.

Monitored visits for Mother, at least three times a week, were ordered, as were reunification services. The minor's attorney indicated that the maternal aunt and uncle would like to be considered for placement of the minor. The court ordered a team decision meeting (TDM) to discuss possible homes for Mother and the minor and services for Mother, and ordered that the Department would have discretion to place the minor with any appropriate relative.

3. *Pretrial Resolution Conference*

The jurisdiction/disposition report for the pretrial resolution conference on December 12, 2007 shows that Maternal Grandmother reported that the maternal great grandfather belonged to the Navajo Tribe and was a teacher in Colorado. The Maternal Grandmother's maternal aunt stated that the maternal great grandparents are from Mexico, not from Indian lands in the United States, and the Maternal Grandmother's family belongs to the Chapala Indian tribe in Guadalajara, Mexico. The social worker again questioned the Maternal Grandmother to ask about her parents and her place of birth, and the Maternal Grandmother "appeared vague, she stated she was born in Chapala without mentioning which country Chapala is [in]. The [Maternal

Grandmother] stated that her mother was born in Chapala and her father in Billings, Montana.” She gave the names of her parents. JV-135 ICWA notices were sent to the Bureau of Indian Affairs in Washington, D.C. and Sacramento, California for the pretrial resolution conference hearing on December 12, 2007. The proof of service shows the service date was November 30, 2007. There are no return receipts in the record.

The Department’s report also shows that when she became pregnant, Mother herself was a dependent of the juvenile court because “she was a victim of child abuse/neglect from [the Maternal Grandmother and] consequently she spent several years in foster care.” The social worker opined that Mother’s poor insights (e.g., letting at risk persons care for M., living with people she does not know well, establishing relationships with people she has just met) might be due to her immaturity resulting from her being isolated from the community at large. The social worker opined Mother needs to learn parenting and independent living skills, the risks of pregnancy and sexually transmitted diseases, including HIV/AIDS, and to learn how to make decisions for herself instead of “following what she is told by others, especially her Deaf crack friends she associates with.”

The report notes that although Mother was being provided with assistance in community services, parenting class referrals and affordable housing through the adult protective services at Union Rescue Mission, she left there on November 19, 2007, carrying her belongings, to go live with a deaf male friend with whom she had spent the previous three days. Mother declined to give the social worker the friend’s address

because the friend did not want it disclosed. Mother told a social worker she did not want to live with the maternal aunt and uncle because the uncle smokes cigars and when she requested that he not smoke them because she did not feel it was good for the infant, the maternal aunt and uncle did not listen to her.

The minor's maternal aunt reported that Mother asked to be taken to the social security office in Compton to obtain benefits for infant M., and on the way there Mother asked the aunt to stop the car so she could visit some friends she saw. When the aunt observed that the friends were homeless and appeared to be drug users, the aunt refused to stop the car. Mother responded by trying to exit the car, while it was moving, and while she had M. in her arms.

When asked by the social worker, on November 19, 2007, what days she would like to have for visits with M., Mother stated she would be available for visits on Saturdays or Sundays, and she did not seem concerned about visiting with the child. Asked if she would be available other days, she thought about it and stated she would be available on Fridays. The social worker gave Mother his business card and asked her to contact him as soon as she wanted to start visits. By December 10, 2007, Mother had not contacted the worker.

CalWorks, the Union Rescue Mission, the minor's maternal aunt, and Mother's prior foster mother were working to find housing for Mother. Mother had been given the opportunity to rent an affordable apartment (\$450 a month), but Mother failed to appear for her final appointment on November 28, 2007. The social worker was not able to determine where Mother was living. A worker at the Los Angeles County

Department of Public Social Services indicated Mother was homeless with no specific address. Before she left her residence at the Union Rescue Mission, she was informed by the social worker what she needed to do to be reunited with the minor—participate in parenting education and counseling at certain facilities where she can receive those services in American Sign Language, and comply with visitation. Mother read and signed the case plan and was given a copy of it. The social worker opined that Mother seemed more interested in moving in with her friend than with making a commitment to the case plan.

The Maternal Grandmother requested that the minor be placed with his great maternal aunt in Bakersfield. However, prior placements with the great maternal aunt had not worked out because she used inappropriate discipline. Placement with the Maternal Grandmother did not appear appropriate because she has a history of her own of child abuse and neglect, and because of that, Mother spent several years in foster care. The social worker submitted a TDM referral to the TDM scheduler.

Mother, Maternal Grandmother, and the maternal aunt were at the pretrial resolution conference hearing. The alleged father was not there. The case was continued to January 29, 2008 for a contested adjudication hearing requested by Mother's attorney. The Department's attorney noted that the Department gave ICWA notice but it was served late because "they was [sic] trying to find everybody." The Department was ordered to submit a supplemental report concerning ICWA notice and return receipt cards or letters. The Department's attorney stated that Mother had given the attorney a phone number the Department could use to communicate with her.

4. *Adjudication/Disposition Hearing*

The interim review report for the January 29, 2008 adjudication/disposition hearing shows that the minor was replaced to a new foster home on December 12, 2007. The Maternal Grandmother arranged with the social worker for Mother and herself to visit the minor on December 28, 2007, but Mother did not appear for the visit and the Maternal Grandmother went to the visit by herself. The foster family agency social worker informed the Department social worker that the first visits would take place at the foster family agency.

Mother was residing for a time at the Volunteers of America shelter in downtown Los Angeles. The staff there told the social worker that Mother was coming to the shelter after 6:00 p.m. and leaving before 6:00 a.m. However, by the time of the January 29, 2008 adjudication/disposition hearing, her whereabouts were once again unknown.

The social worker met with Mother at Volunteers of America shelter on January 9, 2008, to provide her with referrals for parenting classes and individual counseling. They were the same referrals mentioned in the case plan that Mother signed in November 2007. The parenting class had a registration deadline of January 16, 2008. Mother accepted the referrals unwillingly. She told the social worker she was performing the community service ordered by the court on her felony charge of theft from a mall. The social worker reminded her of her responsibility to have visits with M., and Mother stated she was available to visit the minor on Tuesdays. Mother had two deaf friends with her. One of them stated that Mother's new boyfriend had just

stolen Mother's purse and ran away. The two friends were reported to have a history of child abuse and neglect, crack use, and theft.

In addition to meeting with Mother at the Volunteers of America shelter regarding her case plan, the social worker sent her two letters on January 9, 2008, both addressed to her in care of the shelter. One letter informed Mother that the individual counseling was to be at St. John's Medical Center in Santa Monica, and a copy of the court's minute order was enclosed to facilitate her enrollment there. The other letter enclosed a one-page brochure for parenting classes in Hollywood for deaf and hard of hearing parents. By the time of the January 29, 2008 hearing, the social worker had not been able to determine whether Mother was enrolled in parenting classes and individual counseling.

On January 10, 2008, the social worker sent Mother a letter informing her of the place and time of her initial visit with M., which was to be on January 22, 2008 at a foster family agency in West Covina. The letter was addressed to her and sent to the Volunteers of America shelter. The social worker provided an ASL interpreter for the visit. However, Mother never came to visit the minor. On January 24, 2008, the Maternal Grandmother phoned the social worker to say she was planning on visiting M. that afternoon and was not sure if Mother would go to the visit. Mother did not attend the visit.

The social worker opined that Mother's continuing association with deaf and hard of hearing people who have a negative impact on her life minimizes her ability to work out her personal problems. The worker found that Mother has an SSI income that

would enable her to pay half of the rent on an apartment with a responsible roommate but her poor judgment and inability to handle money result in her staying at shelters. The worker opined Mother was unprepared to be responsible for M., and recommended that if Mother was not already enrolled in counseling and parenting education, then her reunification services should be terminated and the minor fast tracked to a permanent plan of adoption.

The report states the ICWA does not apply. It states the Department received “green cards” from the BIA in Sacramento on December 5, 2007 and the BIA in Washington, D.C. on “(10/07).” (The return receipt cards are not in the appellate record.) The record shows that on December 14, 2007, the Department received a letter from the BIA in Riverside, California which states in part that “[the information in the document sent to the BIA] does not require a response or action. It is not a notice pursuant to the [ICWA] but a notice of court hearing.” The BIA’s letter further states in part that the BIA “depend[s] on the family’s information and the investigation conducted by the Department . . . to help us identify tribal heritage so that the appropriate tribe and/or Rancheria can be notified.” The letter notes that “[n]otice to the Bureau is not a substitute for serving notice on the identified federally recognized tribe Compliance with 25 USC 1912 is still required.” (No specific tribes were indicated by the Department on the JV-135 ICWA notice that it sent to the Bureau).

The Department’s report notes that the Maternal Grandmother continued to state she was opposed to M. being adopted and she wanted him to be placed with her or with his great maternal aunt. As noted above, the social worker found those placements

unadvisable because the Maternal Grandmother herself was found to be abusive or neglectful in raising Mother, and prior placements with the minor's great maternal aunt had not worked out because she used inappropriate discipline.

Mother did not appear at the jurisdiction/disposition hearing, nor did the alleged father, but Maternal Grandmother did. Mother's attorney told the court that in conversations she had with Mother, Mother stated she wants M. returned to her, and Mother stated she is able to protect him. Mother also admitted to having stayed with people whom she believed were using drugs.

The court found there was no reason to know the ICWA applies in this case. It stated that if a tribe later intervenes, a motion to set aside the court's ICWA finding would be entertained and the case would be referred to the ICWA courtroom.

The court adjudicated the section 300 petition, finding that Mother had been unable to provide an appropriate home for M. and had left the minor with inappropriate caretakers who have assaulted Mother and used drugs, which places M. at risk of harm. M. was declared a dependent child and custody was taken from Mother and placed with the Department for suitable placement. Reunification services were ordered for the minor and Mother, and the court ordered the following case plan for Mother: counseling with a counselor approved by the Department to address case issues; parenting education; and vocational rehabilitation. Monitored visits were ordered for Mother, with the Department having discretion to liberalize. Mother was ordered to keep the Department informed of her address and telephone number, and to sign all forms necessary to release information regarding court-ordered counseling or treatment.

A six-month judicial review hearing was set for July 29, 2008. Because of the alleged father's status (alleged, not presumed), no reunification services were ordered for him.

On February 15, 2008, Grandmother filed a notice of appeal from the January 29, 2008 order.

DISCUSSION

In her letter brief to this court, Maternal Grandmother stated her objection to the social worker's recommendation that M. should have a permanent plan of adoption. She asserted that the minor should be placed in long term foster care. She also objected to having her visits with the minor monitored. Additionally, she *appears* to object to the minor being placed with his paternal aunt.

Maternal Grandmother's objection to the social worker's recommendation of adoption is premature. It was simply a recommendation by the social worker in the event that reunification services were not ordered for Mother and the minor. However, reunification services were ordered, and the case had just begun its reunification period when this appeal was filed. Thus, that portion of Maternal Grandmother's appeal is without merit. There is no cause for appealing an order for adoption unless and until such an order is made.

Nor can we find merit in her objection to having her visits with the minor monitored. To begin with, the record shows that her care of Mother was determined by the dependency court to be abusive and/or neglectful, which resulted in Mother herself being declared a dependent of the court. Thus, there would be good reason for having Maternal Grandmother's visits monitored. Moreover, there is no indication in the

record that Maternal Grandmother ever asked the court at the two hearings at which she was present (December 12, 2007 and January 29, 2008) for unmonitored visits. Having failed to ask the court for unmonitored visits, Maternal Grandmother has waived the issue insofar as this appeal is concerned. Also, there is no indication in the record that the court even ordered that her visits should be monitored. The only indication that the visits were being monitored is that the foster family agency social worker told the Department social worker that the Maternal Grandmother's first visits would be at the agency. Maternal Grandmother should discuss the subject with the case social worker for clarification.

As noted above, Maternal Grandmother appears to object to the minor being placed with his paternal aunt. However, the record does not indicate that the minor is already placed, or might be placed, with the paternal aunt. The record does not state that the couple with whom M. was replaced are his paternal relatives. Therefore, there does not appear to be any factual basis for this matter. Further, if M. has been placed with his paternal aunt, Maternal Grandmother never voiced an objection to such placement to the trial court.

Finally, we note that although Maternal Grandmother asserted in her notice of appeal that she wants the minor to be placed in her care under an order of legal guardianship, she did not make that assertion in her letter brief. We therefore find that it is no longer an issue at this time. Moreover, as noted above, because this case was in the reunification stage when Maternal Grandmother filed her notice of appeal, the matter of a permanent plan for M. was not an issue then.

DISPOSITION

The order from which Maternal Grandmother has appealed is affirmed.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.